

2005 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB387)

Received: **11/30/2005**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Glenn Grothman (608) 266-7513**

By/Representing: **Ron Sklansky**

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - WCA**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Grothman@legis.state.wi.us**

Carbon copy (CC:) to: **ron.sklansky@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Repossession of motor vehicles

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 12/01/2005	lkunkel 12/02/2005		_____			
/1			pgreensl 12/02/2005	_____	lnorthro 12/02/2005	lnorthro 12/02/2005	

FE Sent For:

<END>

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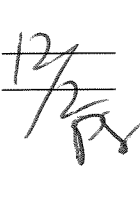
Repossession of motor vehicles ✓

Instructions:

See Attached

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/?	mkunkel	11/mk 12/2		12/2 			
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FE Sent For:

<END>

Kunkel, Mark

From: Sklansky, Ron
Sent: Monday, November 28, 2005 10:41 AM
To: Kunkel, Mark
Subject: SB 387

Mark:

Sen. Grothman is requesting a new substitute amendment to SB 387. The substitute will make the following changes to senate substitute amendment 1:

1. Substitute amendment 1 allow self-help repossession in the case of the underlying collateral or goods related to a motor vehicle consumer lease, that is, self-help repossession of the car. The new substitute amendment should apply self-help repossession not only to a motor vehicle consumer lease, but also to any extension of credit that is made for the purchase of a motor vehicle. It should not be extended to an extension of credit in which the collateral includes a car, but the proceeds of the loan will be used by the debtor for general expenditures (auto title loans). ✓
2. Section 425.204 (3), stats., describing when the surrender of collateral is not voluntary, should not be repealed. Instead, the provision should be retained with an exception for the notice under s. 425.205 (1g) (a).

Let me know if you have any questions.

Ron

Kunkel, Mark

From: Sklansky, Ron
Sent: Monday, November 28, 2005 10:49 AM
To: Kunkel, Mark
Subject: FW: FW: LRB 05s0314/1 & 1dn (attached as requested)

Attachments: Proposed Section 7 to Senate Sub. Amend. __, to 2005 SB 387 (A0401875).DOC



Proposed Section 7
to Senate S...

Mark:

I just received this regarding SB 387. Do you find it helpful?

Ron

-----Original Message-----

From: Chris Snyder [mailto:csnyder@watda.org]
Sent: Monday, November 28, 2005 10:39 AM
To: Sklansky, Ron
Subject: FW: FW: LRB 05s0314/1 & 1dn (attached as requested)

Ron: Here is the language that we believe will satisfy Sen. Grothman. I have talked to Rep. Hundertmark's and Sen. Harsdorf's office about this.

-----Original Message-----

From: Paul Norman [mailto:pnorman@boardmanlawfirm.com]
Sent: Friday, November 25, 2005 3:35 PM
To: Chris Snyder
Subject: Re: FW: LRB 05s0314/1 & 1dn (attached as requested)

Chris,

Here are proposed changes to the Senate Substitute Amendment to SB 387, which are intended to broaden its coverage to all consumer credit transactions in connection with the sale or lease of a motor vehicle.

Because so-called "title loans" are not "consumer loans for the purchase of a motor vehicle", they would not be included in this broadened coverage.

See also my note regarding the addition of a definition of "motor vehicle" to the Wisconsin Consumer Act (ch. 421 to 427) which would incorporate the definition in s. 218.0101(22).

Give me a call to discuss.

>>> "Chris Snyder" <csnyder@watda.org> 11/25/2005 10:08 am >>>
FW: LRB 05s0314/1 & 1dn (attached as requested) -----Original Message-----
From: Simatic, Kurt [mailto:Kurt.Simatic@legis.state.wi.us]
Sent: Wednesday, November 23, 2005 10:12 AM
To: csnyder@watda.org
Subject: FW: LRB 05s0314/1 & 1dn (attached as requested)

From: Schneider, Christian
Sent: Wednesday, November 23, 2005 10:07 AM
To: Simatic, Kurt; Rostan, Jason

Subject: FW: LRB 05s0314/1 & 1dn (attached as requested)

From: Emery, Lynn
Sent: Wednesday, November 23, 2005 10:06 AM
To: Schneider, Christian
Subject: LRB 05s0314/1 & 1dn (attached as requested)

<<05s0314/1>> <<05s0314/1dn>>

Lynn Emery
Program Assistant
Legislative Reference Bureau
(608) 266-3561

PROPOSED AMENDMENT TO SENATE SUBSTITUTE AMENDMENT ____,
TO 2005 SENATE BILL 387

Amend Section 2 of the Substitute Amendment to read:

Section 2. 425.204(1)(intro.) of the statutes is amended to read:

425.205(1)(intro.) Except as provided in s. 425.206, a creditor seeking to obtain possession of collateral or goods subject to a consumer lease [shall] may commence, and for a consumer credit sale of a motor vehicle or a consumer loan for the purchase of a motor vehicle or a motor vehicle consumer lease, if the customer demands such an action in response to a notice given under sub. (1g) shall commence, an action for replevin of the collateral or leased goods. Those action shall be conducted in accordance with ch. 799, notwithstanding s.799.01(1)(c) and the value of the collateral or leased goods sought to be recovered, except that:

Amend Section 3 of the Substitute Amendment to read:

Section 3. 425.205(1g) of the statutes is created to read:

425.205(1g)(a) A merchant may not take possession of collateral for a consumer credit sale of a motor vehicle or a consumer loan for the purchase of a motor vehicle or goods subject to a motor vehicle consumer lease, unless the merchant gives, by mail, the customer a notice containing all of the following information:

1. The name, address, and telephone number of the merchant, a brief identification of the consumer credit sale, consumer loan or motor vehicle consumer lease, and a brief description of the collateral or goods.
2. A statement that, as a result of the customer's default on the consumer credit sale, consumer loan or motor vehicle consumer lease, the merchant may have the right to take possession of the collateral or goods without further notice or court proceeding.
3. A statement that if the customer is not in default or objects to the merchant's right to take possession of the collateral or goods, the customer may, no later than 15 days after the merchant has given the notice, demand that the merchant proceed in court by notifying the merchant in writing.
4. A statement that if the merchant proceeds in court, the customer may be required to pay court costs and attorney fees.

(b) The information required under par. (a) may be combined with any other notice, except that if the customer has a right to cure under s. 425.105, the information required under par. (a) shall be combined with the notice of right to cure under s. 425.104.

(c) A merchant is presumed to have given notice under par. (a) if the merchant sent the notice by certified or registered mail. A merchant who fails to give notice under par. (a) by certified or registered mail is subject to the penalties specified in s. 425.302(1), but such failure does not constitute a failure to comply with s. 425.206(1)(d).

Amend Section 7 of the Substitute Amendment to read:

Section 7. 425.206(1)(d) of the statutes is created to read:

425.206(1)(d) For a **consumer credit sale of a motor vehicle, a consumer loan to a customer for the purchase of a motor vehicle or** a motor vehicle consumer lease, the customer has not made a demand as specified in s. 425.205(1g)(a)3. and, no sooner than 15 days after the merchant gives the notice specified in s. 425.205(1g)(a), the merchant has taken possession of the collateral or goods in accordance with sub. (2).

Note: Since the term "motor vehicle" is not defined elsewhere in the Wisconsin Consumer Act, we should consider adding the same definition of "motor vehicle" to s. 421.301 as is found at s. 429.104(2): "'Motor vehicle' has the meaning given in s. 218.0101(22)."

50336/1

RM
NOT
DUN

**ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2005 ASSEMBLY BILL 594**

SSA to
SB^v 387

Reagan

✓

1 **AN ACT to repeal** 425.204 (3); **to renumber and amend** 425.202 and 425.401;
2 **to amend** 425.205 (1) (intro.), 425.206 (1) (intro.), 425.206 (1) (a), 425.206 (1)
3 (b), 425.207 (2) and 427.105 (2); and **to create** 425.202 (2), 425.205 (1g), 425.206
4 (1) (d), 425.2065 and 425.401 (2) of the statutes; **relating to:** repossessions of
5 motor vehicles and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 **SECTION 1.** 425.202 of the statutes is renumbered 425.202 (intro.) and amended
7 to read:

8 **425.202 Definition: “collateral” Definitions.** (intro.) For purposes of this
9 chapter, “collateral”:

10 **(1) “Collateral”** means goods subject to a security interest in favor of a
11 merchant which secures a customer’s obligations under a consumer credit
12 transaction.

INSERT 2 - 3

1 **SECTION 2.** 425.202 (2) of the statutes is created to read:

2 425.202 (2) "Motor vehicle" has the meaning given in s. 218.0101 (22).

3 ~~**SECTION 3.** 425.204 (3) of the statutes is repealed.~~

4 **SECTION 4.** 425.205 (1) (intro.) of the statutes is amended to read:

5 425.205 (1) (intro.) Except as provided in s. 425.206, a creditor seeking to
6 obtain possession of collateral or goods subject to a consumer lease ~~shall~~ may
7 commence, and, for a consumer credit transaction for the acquisition or use of a motor
8 vehicle, if the customer demands such an action in response to a notice given under
9 sub. (1g) shall commence, an action for replevin of the collateral or leased goods.
10 Those actions shall be conducted in accordance with ch. 799, notwithstanding s.
11 799.01 (1) (c) and the value of the collateral or leased goods sought to be recovered,
12 except that:

13 **SECTION 5.** 425.205 (1g) of the statutes is created to read:

14 425.205 (1g) (a) A merchant may not take possession of collateral or goods
15 subject to a consumer credit transaction for the acquisition or use of a motor vehicle
16 under s. 425.206 (1) (d), unless the merchant gives, by mail, the customer a notice
17 containing all of the following information:

18 1. The name, address, and telephone number of the merchant, a brief
19 identification of the consumer credit transaction, and a brief description of the
20 collateral or goods.

21 2. A statement that, as a result of the customer's default on the consumer credit
22 transaction, the merchant may have the right to take possession of the collateral or
23 goods without further notice or court proceeding.

24 3. A statement that if the customer is not in default or objects to the merchant's
25 right to take possession of the collateral or goods, the customer may, no later than

1 15 days after the merchant has given the notice, demand that the merchant proceed
2 in court by notifying the merchant in writing.

3 4. A statement that if the merchant proceeds in court, the customer may be
4 required to pay court costs and attorney fees.

5 (b) The information required under par. (a) may be combined with any other
6 notice, except that if the customer has a right to cure under s. 425.105, the
7 information required under par. (a) shall be combined with the notice of right to cure
8 under s. 425.104.

9 (c) A merchant is presumed to have given notice under par. (a) if the merchant
10 sent the notice by certified or registered mail. A merchant who fails to give notice
11 under par. (a) by certified or registered mail is subject to the penalties specified in
12 s. 425.302 (1), but such failure does not constitute a failure to comply with s. 425.206
13 (1) (d).

14 **SECTION 6.** 425.206 (1) (intro.) of the statutes is amended to read:

15 425.206 (1) (intro.) Notwithstanding any other provision of law, no merchant
16 may take possession of collateral or goods subject to a consumer lease in this state
17 ~~by means other than legal process in accordance with this subchapter~~ except when
18 any of the following apply:

19 **SECTION 7.** 425.206 (1) (a) of the statutes is amended to read:

20 425.206 (1) (a) The customer has surrendered the collateral or leased goods;

21 **SECTION 8.** 425.206 (1) (b) of the statutes is amended to read:

22 425.206 (1) (b) Judgment for the merchant has been entered in a proceeding
23 for recovery of collateral or leased goods under s. 425.205, or for possession of the
24 collateral or leased goods under s. 425.203 (2); ~~or.~~

25 **SECTION 9.** 425.206 (1) (d) of the statutes is created to read:

1 425.206 (1) (d) For a consumer credit transaction for the acquisition or use of
2 a motor vehicle, the customer has not made a demand as specified in s. 425.205 (1g)
3 (a) 3. and, no sooner than 15 days after the merchant gives the notice specified in s.
4 425.205 (1g) (a), the merchant has taken possession of the collateral or goods in
5 accordance with sub. (2).

6 **SECTION 10.** 425.2065 of the statutes is created to read:

7 **425.2065 Notice to law enforcement.** (1) In this section, “law enforcement
8 agency” means the police department, combined protective services department
9 under s. 61.66, or sheriff, that has primary responsibility for providing police
10 protection services in the city, village, or town in which a repossession is expected to
11 occur.

12 (2) A merchant who repossesses collateral or goods subject to a consumer credit
13 transaction for the acquisition or use of a motor vehicle under s. 425.206 (1) (d), or
14 a person who repossess the collateral or goods on behalf of the merchant, shall notify,
15 verbally or in writing, the law enforcement agency about the repossession. The
16 notification shall include the names of the customer, merchant, and, if applicable, the
17 person who repossesses the collateral or goods on behalf of the merchant. The
18 notification shall also include a description of the collateral or goods. Notification
19 under this subsection shall be made before the repossession occurs.

20 (3) Failure to comply with this subsection does not constitute a failure to
21 comply with s. 425.206 (1) (d).

22 **SECTION 11.** 425.207 (2) of the statutes is amended to read:

23 **425.207 (2)** A merchant who reasonably believes that a customer has
24 abandoned collateral or goods subject to a consumer lease may take possession of
25 such collateral or leased goods and preserve it. However, the customer may recover

1 such collateral or leased goods upon request unless at the time of request the
2 ~~customer has surrendered the collateral or leased goods, or judgment for the~~
3 ~~merchant has been entered in a proceeding for recovery of collateral or leased goods~~
4 ~~under s. 425.205 or in a judgment described in s. 425.203 (2) perfected the right to~~
5 possession under s. 425.206 (1) (a), (b), or (d). A merchant taking possession of
6 collateral or leased goods pursuant to this section shall promptly send notification
7 to the customer's last-known address of such action and of the customer's right to
8 recover such collateral or leased goods under this section. If the collateral or leased
9 goods are recovered by the customer pursuant to this section, it shall be returned to
10 the customer at the location where the merchant took possession of such collateral
11 or leased goods pursuant to this section or, at the option of the merchant, at such
12 other location designated by the customer; and any expense incurred by the
13 merchant in taking possession of, holding and returning the collateral or leased
14 goods to the customer shall be borne by the merchant. If after taking possession of
15 collateral or leased goods pursuant to this subsection, the merchant perfects the
16 right to possession ~~through a surrender by the customer or a judgment under s.~~
17 ~~425.203 (2) or 425.205~~ under s. 425.206 (1) (a), (b), or (d), the customer is liable for
18 the expenses set forth in s. 409.615 (1). In determining such expenses, leased goods
19 shall be considered collateral under s. 409.615 (1). However, a customer is not liable
20 for expenses of holding the collateral or leased goods from the time the merchant
21 takes possession until the merchant perfects the right to possession in the manner
22 provided in this subsection.

23 **SECTION 12.** 425.401 of the statutes is renumbered 425.401 (1) and amended
24 to read:

425.401 (1) ~~A~~ Except as provided in sub. (2), a person who willfully and knowingly engages in any conduct or practice in violation of chs. 421 to 427 may be fined not more than \$2,000.

SECTION 13. 425.401 (2) of the statutes is created to read:

425.401 (2) A person who intentionally violates s. 425.2065 (2) may be fined not more than \$500.

SECTION 14. 427.105 (2) of the statutes is amended to read:

427.105 (2) If a customer establishes that the customer was induced to surrender collateral (as defined in s. 425.202) (1), by conduct of the merchant which violates this chapter, the customer shall be entitled to a determination of the right to possession of the collateral pursuant to s. 425.205 (1) (e) in any action brought under this subchapter, and if the customer prevails on such issue, in addition to any other damages under this subchapter, the customer shall be entitled to recover possession of the collateral if still in the merchant's possession, together with actual damages for the customer's loss of use of the collateral.

(END)

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0336/lins
MDK:.....

INSERT 2-3:

SECTION 1. 425.204 (3) of the statutes is amended to read:

425.204 (3) The surrender of collateral by a customer is not a voluntary surrender if it is made pursuant to a request or demand, other than a notice under s. 425.205 (1g) (a), by the merchant for the surrender of the collateral, or if it is made pursuant to a threat, statement, or notice, other than a notice under s. 425.205 (1g) (a), by the merchant that the merchant intends to take possession of the collateral.

History: 1971 c. 239; 1991 a. 316; 2001 a. 10.